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later: Mr. Böhlke (Vice-Chairperson). (Brazil)

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The meeting was called to order at 10.15 a.m.

Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-second session (A/64/17)

1. **Mr. Oh Soo-Geun** (Chairperson of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its forty-second session (A/64/17), said that one of the main achievements of that session had been the adoption of the Practice Guide on Cross-Border Insolvency Cooperation. Increased trade and investment had resulted in an increase in business conducted on a global basis, so that debtors could have assets in more than one State, raising the possibility of multiple parallel insolvency proceedings. Consequently, there was an urgent need for cross-border insolvency cooperation and coordination. The absence of national and international instruments to address the problem had encouraged those dealing with insolvency to develop strategies and techniques on a case-by-case basis to resolve conflicts arising when courts of different States attempted to apply different laws and enforce different requirements on the same parties. The Practice Guide provided readily accessible information on current practices concerning cross-border insolvency coordination and cooperation for use by judges, practitioners and other stakeholders in insolvency proceedings and had been extensively applied in recent complex cases. The Commission requested the Secretary-General to publish the text, including electronically, and to transmit it to Governments.

2. Working Group V (Insolvency Law) had adopted a number of recommendations concerning the domestic treatment of insolvent enterprise groups and had reached agreement on its approach to the international treatment of such groups, which was reflected in a set of 15 recommendations. The commentary to accompany the recommendations would be submitted to the Working Group for consideration during its next sessions. At the Eighth Multinational Judicial Colloquium, held in June 2009, over 80 judges from some 40 States had discussed cross-border cooperation in general and the role of judges and judicial communication.

3. Working Group I (Procurement) was revising the 1994 Model Law on Procurement of Goods, Construction and Services (the 1994 Model

Procurement Law) to reflect new practices, especially those resulting from e-procurement, and the experience gained from its use as a basis for law reform. The focus of the early sessions had been on the use of electronic communications in public procurement, electronic reverse auctions, abnormally low submissions and framework agreements; new provisions or substantive amendments had been recommended in those areas. The later sessions had examined new provisions or amendments in the area of procurement of services, alternative procurement methods, simplification and standardization of the Model Law and conflicts of interest. A Committee of the Whole had been established for the substantive consideration of those areas and had examined the first chapter of the proposed revised Model Law on defence sector procurement and socio-economic factors in public procurement. The Commission had noted the importance of completing the revised Model Law as soon as reasonably possible, given its expected impact on ongoing procurement law reforms at the local and regional levels.

4. Working Group II (Arbitration and Conciliation) was revising the 1976 UNCITRAL Arbitration Rules, respecting the structure and spirit of the original text, and the flexibility of its wording. It was hoped that the revised Rules could be adopted in 2010. The Working Group had discussed a proposal to expand the role of the Secretary-General of the Permanent Court of Arbitration at The Hague under the Arbitration Rules; however, the Commission had agreed that the mechanism established in the 1976 Rules should not be changed. The question of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority once the revision of the Rules had been completed, and the issues of arbitrability and online dispute resolution would be maintained on the Working Group's agenda.

5. Working Group VI (Security Interests) had been entrusted with the preparation of an annex to the draft Guide on Secured Transactions specific to security rights in intellectual property — the main asset for many small and medium-sized businesses — so as to ensure that comprehensive and consistent guidance on security interests in movable assets would be provided to States as soon as possible. Innovations based on intellectual property should be financed and secured transactions in which the encumbered asset was an intellectual property should be facilitated in order to

promote economic development. It was hoped to finalize and adopt the annex to the Guide in 2010. A list of topics had been suggested for inclusion in the future work programme of the Working Group and a final decision would be taken following the next session of the Working Group and, possibly, after an international colloquium to be held in early 2010 with broad participation of experts from Governments, international organizations and the private sector.

6. In 2008, the General Assembly had adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, prepared by the Commission, recommending that the rules embodied in the Convention be known as “the Rotterdam Rules”. The Convention was designed to provide greater predictability and uniformity in an area previously characterized by competing multilateral, regional and domestic regimes. Following the signing ceremony in September 2009, a total of 19 States had signed or acceded to the Convention and, together, they accounted for approximately one third of world trade. A brief explanatory note would be prepared by the UNCITRAL secretariat as well as an index to assist readers in accessing the legislative history of the text on an article by article basis.

7. Working Group IV (Electronic Commerce) had not met since completing its work on the Convention on the Use of Electronic Communications in International Contracts in 2004, and the Commission was considering proposals for its future work, such as electronic transferable records and online dispute resolution in cross-border transactions. The Commission had continued to follow closely technological developments that could impact international trade law and had considered a note by the secretariat providing an update on policy considerations and legal issues relating to the implementation and operation of cross-border electronic single-window facilities. The secretariat had been asked to pursue work in that area, including by cooperating with the World Customs Organization.

8. At previous sessions, the Commission’s secretariat had reported on its work on commercial fraud indicators, and had been requested to make some adjustments and additions to improve them and to publish them as an information note. The indicators could become an important tool for prevention and education in the context of the work of the United Nations Office on Drugs and Crime (UNODC) and the

Commission on Crime Prevention and Criminal Justice. It was proposed that future work on financial fraud could focus on developing further indicators of financial fraud and identify preventive measures and measures to resolve efficiently incidents of financial fraud with a view to preserving the integrity of the global financial market.

9. The UNCITRAL secretariat played an essential role in providing technical assistance to developing countries, and more technical assistance would be required in almost every legislative area to fulfil the Commission’s mandate of furthering the progressive harmonization and unification of the international trade law. The assistance was almost as important as the formulation of uniform rules. Consequently, the secretariat was encouraged to continue providing such assistance and to improve its outreach, to developing countries in particular, possibly by establishing a presence in United Nations field offices in specific countries. Nevertheless, the ability to respond to requests for technical cooperation and assistance depended on the availability of funds. Hence, the Commission reiterated its appeal to all States, international organizations and other interested entities to consider contributing to the UNCITRAL trust funds, and expressed its appreciation to Cameroon, Mexico, Singapore, Austria and France for their contributions. It also appealed for assistance in identifying funding sources, or organizations that might partner with UNCITRAL to support technical cooperation and assistance activities relating to the use and adoption of UNCITRAL texts, and play a more significant role in their implementation.

10. The system for the collection and dissemination of case law on UNCITRAL texts (CLOUT) continued to be an important tool for promoting better understanding of the legal standards developed by UNCITRAL. The enhancement of the CLOUT system to disseminate case law and other legal materials in all six official languages of the United Nations was key to a more uniform interpretation and application of UNCITRAL texts and should be dealt with as a priority. The completeness of the case law collection should also be enhanced by supplementing it with cases from countries that were underrepresented.

11. During its most recent session, the Commission had examined the work of other international organizations in relation to the harmonization of international trade law. The secretariat was engaging in

a dialogue with a number of regional and international organizations on legislative and technical assistance activities, and the Commission supported the use of travel funds for that purpose.

12. The Commission's working methods had also been considered during the session; an in-depth discussion had been held on the taking of a decision by consensus and, in particular, on the rights of observer States in that regard. However, no conclusions had been reached.

13. Recognizing that the 2007 revision of the Uniform Customs and Practice for Documentary Credits (UCP 600) of the International Chamber of Commerce provided successful international contractual rules for documentary credits, the Commission had commended its use, when appropriate, in transactions involving such credits.

14. A suggestion had been made that UNCITRAL should carry out a study on microfinance in the context of international economic development, in close coordination with other organizations already active in that area, in order to identify the need for a regulatory and legal framework for protecting and developing the microfinance sector. The Secretariat had been asked to prepare a detailed study and relevant proposals.

15. A draft guide to enactment of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) was being planned. The information gathered during the project implementation would be published on the UNCITRAL website.

16. Since the Sixth Committee would be discussing the rule of law at the national and international levels (agenda item 83), the Commission had also focused its discussion on that topic, in particular on its role in promoting the rule of law at the international level. It considered that greater awareness, understanding and use of international commercial law were as important for modern commerce and sustained economic development as for good governance, justice and legal empowerment. Consequently, promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels.

17. **Ms. Köhler** (Austria) commended the Commission on the progress made at its forty-second session. The Practice Guide on Cross-Border Insolvency

Cooperation would provide readily accessible information on current practice that would facilitate and promote cross-border coordination, avoid unnecessary delay and costs and improve the chances for rescuing financially troubled individuals and companies. While her delegation supported the comprehensive review of the Commission's working methods, it was important to uphold the traditional principles of efficiency, flexibility, transparency, equality and consensus. In the context of the ongoing project on monitoring the legislative implementation of the New York Convention, she acknowledged the important role of the Commission's secretariat in disseminating information on the aims and results of its work and would support the strengthening of the secretariat's capacities. The Commission should also continue its efforts to promote the rule of law at the international level.

18. The high quality and wide acceptance of the Commission's work was founded on the expertise and contributions of all its members. She noted with regret that several delegations had not been present at the sessions of the Commission and its working groups during the past year. Her Government had made a voluntary contribution to the trust fund established to provide travel assistance to developing countries that were members of the Commission; she appealed to other Governments, organizations and individuals to consider making similar contributions in order to increase the developing countries' representation and build their local expertise and capacities in the field of international trade law.

19. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Norway and Sweden), requested that the text of the statement by the Chairperson of the Commission should be circulated. The Nordic countries appreciated the Commission's efforts to maintain close cooperation with other relevant international bodies and were pleased that the activities of its working groups were characterized by open discussion among the members.

20. The Practice Guide on Cross-Border Insolvency Cooperation would be useful for practitioners, judges, creditors and other stakeholders in insolvency proceedings. The Nordic countries strongly supported the effort to revise the Commission's 1976 Arbitration Rules and welcomed the progress made by Working Groups IV and V. He commended the Commission and the Netherlands on the well-organized signing

ceremony for the Rotterdam Rules, and noted that Denmark and Norway were among the 16 States that had signed the Convention.

21. **Ms. Thomas-Eichhorn** (Switzerland) said that Switzerland had recently signed the Rotterdam Rules, which represented a significant step towards international harmonization in the area of contracts for the international carriage of goods by sea.

22. In light of the current financial and economic crisis, the progress made by Working Group V was particularly important. Now that delegations had managed to find new common ground in a field — insolvency law — that was traditionally marked by diversity, even more ambitious projects in the form of multilateral conventions seemed possible. Her delegation attached great importance to the ongoing revision of the 1976 Arbitration Rules and planned to participate in the Commission's discussion of the topic as an observer State. In the current economic climate, facilitating access to credit for small and medium-sized enterprises was more important than ever; her delegation therefore welcomed the completion of work on the Legislative Guide on Secured Transactions and supported preparation of an annex on security rights in intellectual property.

23. **Mr. Emmerson** (Australia) expressed his delegation's strong support for the work of the Commission. The draft model law on public procurement, once finalized, would be a widely used and helpful product; he particularly welcomed its provisions on defence procurement. Similarly, the draft notes on cooperation, communication and coordination in cross-border insolvency proceedings would be a valuable resource for courts and insolvency practitioners around the world, particularly in the current economic climate. Lastly, he commended the secretariat's efforts to identify new topics of significance to the international community, including that of microfinance, which was an important tool in poverty alleviation.

24. **Mr. Shevtsov** (Belarus) said that the work done by UNCITRAL on the compilation of a body of precedents on the texts of the conventions drafted by the Commission was of practical importance, and the Commission's model documents and recommendations for the legislative bodies of States played a considerable role in the improvement of domestic legislation. Of similar importance was the

Commission's compilation of practical experience of trans-border insolvency proceedings and on improvement of the approaches set out in the Model Insolvency Law. In view of the importance of insolvency issues in the current economic crisis, the Practice Guide on Cross-Border Insolvency Cooperation should be finalized at an early date.

25. The work on the revised model law on procurement should be intensified and should take into account the changes in international trade law in such a way so as to produce instruments which satisfied contemporary demands without departing from provisions which had proved their usefulness. It was important in that connection to complete the work on electronic reverse auctions, framework agreements, electronic procurement as a whole, and competitive dialogue. The revised model law should take into consideration the experience of the regulation of public procurement gained in the application of such international treaties as the Government Procurement Agreement of the World Trade Organization (WTO).

26. Belarus supported the work of Working Group IV on a comprehensive comparative document on electronic trade. Because of the technical differences between systems of electronic trade, States should be mindful of the problems inherent in the choice of one system over another. There should be long-term collaboration on that question between UNCITRAL and WTO. The Commission should also step up its cooperation with other international bodies working on issues related to its work and, in particular, with the United Nations Development Programme (UNDP) and its country offices.

27. His delegation would welcome an official commentary elucidating the advantages of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea over the mixed treaties on the international carriage of goods, for such a commentary would encourage States to accede to the Convention. With regard to the revision of the UNCITRAL Arbitration Rules, Belarus was against the inclusion of a human rights component in the procedure for considering commercial disputes, for that would greatly complicate the existing arrangements, but contemporary trends in the use of information technology should be taken into account in that procedure. A separate document should be drafted on the procedure for settlement of investment disputes. The widespread dissemination, in all six official

languages of the United Nations, of extracts from court and arbitration decisions on UNCITRAL texts would promote their unified interpretation and application. His delegation wished to state its satisfaction with the existing system for exchanges of information between UNCITRAL and the national correspondent of Belarus in various areas of international trade law.

28. It regarded improvement of the Commission's working methods as a very important matter, on which excellent preparatory work had been done. It was in favour of decision-making by consensus, which must mean the absence of objections and the disregard of any objections by observer States in the achievement of consensus. The use of indicative voting should be encouraged. The French proposal on the systematic organization of the participation of observer States and the strengthening of the role of States warranted support, and the role of observer States and non-governmental organizations (NGOs) must be clearly demarcated. When it came to the awarding of observer status to NGOs, equitable geographical representation and equal representation of all legal systems must be the rule.

29. The work of the UNCITRAL secretariat deserved commendation, but more should be done to meet countries' requirements with respect to personnel training and technical assistance with the regulation of international trade. The secretariat should make appropriate use of extrabudgetary donor resources in that connection. Belarus wished to increase its cooperation with UNCITRAL on international trade matters: it would be useful to conclude cooperation agreements to that end.

30. *Mr. Böhlke (Brazil), Vice-Chairperson, took the Chair.*

31. **Mr. Zhou Yong** (China) said that his Government had benefited from the Commission's model laws and legislative guides and had made efforts to raise national awareness of its achievements. The current agenda items reflected the many emerging issues in international trade that required immediate international coordination.

32. The revised text of the 1994 Model Procurement Law which reflected the new practice of public procurement through electronic means and built upon the experience gained from legal reforms made on the basis of the Model Law, should be considered and adopted as soon as possible. In formulating draft

conventions and model laws, the Commission should take into account the various levels of economic development and the diversity of legal systems of Member States, as well as the views of all parties, so that its outcomes would enjoy wider acceptance. It should also endeavour to raise awareness of its work by publicizing and disseminating the outcomes thereof and providing training and information to developing States.

33. **Mr. Natalegawa** (Indonesia) said that his delegation supported the decision to strengthen the provisions of the 1994 Model Procurement Law in order to ensure that they were consistent with the United Nations Convention against Corruption by providing for a mandatory system of independent review and deleting the exemptions from review contained in the 1994 Model Law. In its effort to bring defence sector procurement and socio-economic factors within the scope of the revised instrument, the Commission should bear in mind the need to respect Member States' prerogatives in those areas. He hoped that the draft text could be finalized at the next session.

34. It was encouraging that 19 States had become parties to the Rotterdam Rules, particularly as they would enter into force once they had been ratified by a twentieth State.

35. **Ms. Hong** (Singapore) said that harmonization of the legal rules applicable to cross-border commercial transactions reduced uncertainties, and thus transactional costs, and promoted the growth of international trade. Increasing commercial transactions could translate into greater prosperity and well-being for the world's peoples, promote greater understanding and interdependence among nations and contribute to world peace. The resulting harmonized rules should be effective, rational and easily understood and applied; they should not favour any one State or legal system or specific commercial interests. The Commission's secretariat, its Chairperson and the chairpersons of its working groups had an important role to play in ensuring that the harmonization process was conducted with integrity.

36. She also welcomed the Commission's efforts to harmonize its working methods, including by providing guidance to its chairpersons on the conduct of meetings and clarifying the roles of Member States and observers. In the past, the practices applied at different sessions had sometimes been inconsistent. Decisions

should not be determined by observers who had been invited to participate because of the specific interests they represented and who sometimes advocated strongly for those interests. The Commission had been unable to arrive at a conclusion on that important matter and she hoped that it could be resolved soon.

37. In the report on its forty-second session (A/64/17), the Commission had urged a number of its working groups to expedite their work. Delays deprived the international community of the benefits of that work and were costly in terms of the resources consumed, especially for small States. Regrettably, the revisions to the 1994 Model Procurement Law had not been completed at the February 2009 session of Working Group I, which Singapore had chaired. She hoped that that work would be completed at the 2010 session of the Commission.

38. In the past, her delegation had expressed concern at the length of time taken to complete work on the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, despite the fact that that work was based on similar text that had already been finalized by the Comité Maritime International (CMI). She was therefore pleased to note that that work had been completed with the recent signing of the Rotterdam Rules. It might be useful to examine the processes involved in the formulation of those Rules with a view to making improvements in the Commission's working methods.

39. One aspect of the Commission's work was promotion of the instruments that resulted from its efforts, including by dispelling misconceptions about their meaning and how they were to be used so that officials of States who had not participated in their preparation would know and appreciate the solutions provided. The Commission's secretariat had an active programme in that area, but more might need to be done. Her Government would be happy to assist with the Commission's training programmes and hoped that other States would do so as well.

40. **Mr. Keong** (Malaysia) said that, as an active participant in Working Group II, his delegation supported the decision to maintain the original structure and spirit of the 1976 Arbitration Rules, as amended in 2006, and that any departure from them should be carefully considered. The revised Rules should take into consideration the important and

widely accepted principle that in the event of a conflict between the Rules and an applicable provision of domestic law, the latter should prevail, particularly with respect to the rights of parties, the power of the arbitrator, awards and interim measures, and the inherent power of domestic courts to apply and adjudge matters relating to the Rules. While reference to other established arbitration rules or legislation would be a useful guide to the Working Group, the form of the revised Rules should not be based wholly on those models; one of the merits of the Rules was their less rigid, more universal form that was widely accepted by parties. The views of members of the Working Group should be taken into account. His delegation favoured consideration of issues relating to arbitrability, online dispute resolution, electronic communications and investor-State dispute settlement in order to modernize and promote greater efficiency in arbitral proceedings; the Working Group should be allowed sufficient time to complete that work.

41. While supporting the efforts of Working Group VI, his delegation was concerned at the proposal to develop a contractual guide on intellectual property licensing, given that the World Intellectual Property Organization (WIPO) was already engaged in that area.

42. Malaysia had been actively involved in the consideration of legal issues relating to implementation of the Association of Southeast Asian Nations (ASEAN) Single Window. He hoped that the lessons learned and challenges faced by ASEAN would contribute to the Commission's study of the legal aspects involved in implementing a cross-border single window facility.

43. As for the rules of procedure and methods of work of the Commission, the consensus approach should be maintained in order to facilitate broad cooperation among States with different legal, economic and social systems and to ensure that the resulting uniform rules were not simply narrowly approved, but generally acceptable.

44. **Mr. Kim Hyungjun** (Republic of Korea) said that, with the increase in international transactions, the disparities among the different national laws and regulations had come to the fore as obstacles to the flow of international trade. In that context, the Commission had made an important contribution to harmonizing international trade law and could be a driving force behind recovery from the global

economic crisis. Korea supported its efforts, based on its experience in overcoming the Asian financial crisis and building up trust among other member States.

45. His country had recently hosted the International Judicial Symposium, which had focused on insolvency proceedings at the cross-border or national level, and the Supreme Court of Justice planned to continue inviting legal experts to exchange practice and theory. The adoption of the Practice Guide on Cross-Border Insolvency Cooperation should be considered a major achievement, which would provide assistance to individuals and groups in financial difficulty. His delegation also attached great importance to the progress on the issues of arbitration and conciliation, insolvency law and security interests and to the completion of the draft revised model law on procurement as soon as possible.

46. The Commission's future work in the area of commercial fraud should prove a useful tool for preventing the adverse effects of this offence on the economy. The Republic of Korea welcomed the preparation of lists of indicators of such fraud and considered that the effort should be extended to the area of financial fraud, with preventive measures based upon collaboration with other international organizations, including the United Nations Office on Drugs and Crime (UNODC).

47. Technical assistance activities formed an essential element of the Commission's work and the Republic of Korea appreciated its efforts to expand such activities and improve its outreach to developing countries, especially by establishing a presence in the different regions or countries.

48. **Ms. McLeod** (United States of America) said that the United States strongly supported the technical and practical work of the Commission, as well as its working methods. In that regard, it had signed the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, which it considered would bring harmonization to that area of trade and commercial law.

49. Given the economic circumstances of the past year and the heightened importance of achieving relevant international collaboration, the completion of the Practice Guide on Cross-Border Insolvency Cooperation was particularly welcome. The Guide supported implementation of the 1997 UNCITRAL Model Law on Cross-Border Insolvency, which the

United States Congress had enacted as part of its Bankruptcy Code.

50. Her delegation supported the continuing efforts of the Commission's working groups and its consideration of work in new areas relating to e-commerce. It had led like-minded States in rejecting proposals to revise the rules and procedures for the Commission's work that would have sharply reduced its effectiveness. One key issue was the role of observer States and technical non-governmental organizations (NGOs). The United States and others had supported their role of providing advice and information on transactional practices and the economic impact of proposals, as the basis on which Governments could be assured that the proposed solutions actually worked in practice. Another important issue was the Commission's method of reaching agreement. Since 1970, it had proceeded on the basis of a substantial prevailing majority, rather than on full unanimity, subject to the right of member States to obtain a vote on any matter. Shifting to a unanimity standard would substantially curtail the production of detailed commercial law treaties, model laws and other texts.

51. Her delegation also considered that enhancing technical assistance, within existing resources, was a positive step that benefited developing countries.

52. **Mr. Srivali** (Thailand) said that his country was very interested in insolvency law and was participating in Working Group V, which was in the process of developing a comprehensive new regime in that area. The recently adopted Practice Guide on Cross-Border Insolvency Cooperation would be useful as a basis for developing the relevant national laws. In July 2009, Thailand had hosted the Sixth Forum on Asian Insolvency Reform, which had provided a forum for Government officials, policymakers and practitioners from Asia and other invited countries to share experiences and discuss the challenges resulting from the global financial crisis.

53. His delegation considered it timely to revise the UNCITRAL Model Law on Procurement of Goods, Construction and Services so as to reflect new practices, particularly those arising from the use of electronic communications and modern business methods. It hoped that the revision of the UNCITRAL 1976 Arbitration Rules would maintain the simplicity and general nature of the original rules. It also appreciated the progress made on developing an annex

to the Legislative Guide on Secured Transactions in relation to intellectual property.

54. He further noted that Thailand would complete its membership in UNCITRAL in 2010 and had re-applied for membership for the following term.

55. **Mr. Tchatchouwo** (Cameroon) said that the resolution of the General Assembly (2205 (XXI)) establishing the Commission required it to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade. Some progress had been made in that regard; for example, the new United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, which Cameroon had recently signed, had been welcomed by developing countries because it reconciled the interests of the shippers from the South and the carriers from the North. The Commission should continue developing that type of initiative in order to fulfil its role in the progressive harmonization of international trade law so as to reduce the legal obstacles that hindered the flow of international trade.

56. Cameroon welcomed the timely adoption of the Practice Guide on Cross-Border Insolvency Cooperation, which could assist individuals and companies in financial difficulty as a result of the current financial crisis. It also appreciated the other achievements of the Commission's working groups. The revision of the 1976 Arbitration Rules should seek to modernize the rules, while retaining their current structure and spirit, in order to promote greater efficiency in arbitral proceedings. Guidelines for the incorporation and use of all UNCITRAL model laws would be extremely useful for national legislators and other users, and Cameroon asked the secretariat to provide increased information on the different instruments adopted by UNCITRAL and to promote their use by organizing information missions, publishing articles and, in particular, holding regular seminars in developing countries.

57. When UNCITRAL was created in 1966 it had only 29 members. Currently, it had 66 members, together with many observer States, NGOs and independent experts taking part in its work. Consequently, the Commission's working methods should be reviewed, especially with regard to the role of observers. Cameroon endorsed the French proposal to place the issue of working methods on the

Commission's agenda. Furthermore, UNCITRAL should join the effort to protect the environment and, to that end, should update and harmonize laws on trade in non-renewable or scarce resources.

58. Lastly, on behalf of the developing countries members of UNCITRAL, his delegation requested that the meetings of the working groups be clustered in order to reduce the amount of travel involved.

59. **Mr. Dempsey** (Canada) said that Canada welcomed the modernization of the 1976 Arbitration Rules, which would lead to updated practices and greater efficiency in arbitral proceedings. In addition, the recently adopted Practice Guide on Cross-Border Insolvency Cooperation would be a very useful tool for practitioners, judges and other stakeholders in insolvency proceedings.

60. The subject of security interests in intellectual property was important from a commercial perspective, and Canada noted with satisfaction the progress achieved thus far. The work on the 1994 Model Procurement Law, however, had been going on for almost six years. In the interest of States that were waiting to modernize their procurement laws, he urged the Commission to work towards the adoption of the revised version at its session in 2011.

61. Several projects were expected to conclude over the next year, paving the way for new work to commence. In 2008, the Commission had agreed that the question of transparency in investor-State treaty-based arbitration merited future consideration and should be given priority. Canada looked forward to participating in work on that subject. Preparatory work on current practice on transparency in treaty-based arbitration had begun by way of the circulation of a questionnaire, to which all States were encouraged to respond. His delegation was pleased to see that several subjects had been suggested in the area of secured transactions, and it supported continued efforts to harmonize the law in that area. Mindful of the need to use resources wisely, it urged the Commission to plan its future work carefully, to consider medium to longer-term planning and to select projects in areas where there was a demonstrated need for harmonization.

62. **Mr. Cabouat** (France) said that his delegation supported the approach taken by Working Group I and stressed that Working Group II should complete its current work before turning to the important but less specific issue of investor-State disputes. Working

Group V should continue to respect, in its work on the topic of insolvency law, the fundamental corporate law principle of the independence of legal persons. Working Group VI should complete its work on intellectual property rights quickly.

63. The increase in the Commission's membership from 36 to 60 States was a sign of the growing interest in its work. While his delegation welcomed that development, it felt that the Commission's working methods, which had hitherto been somewhat informal, should be clarified. Having proposed consideration of that issue, his delegation welcomed the progress achieved thus far and called on the Commission's secretariat, which had already collected and summarized information on past practice, to contribute constructively to work on the topic.

64. **Mr. Kuzmin** (Russian Federation) said that the Commission played a notable role in encouraging the rule of law at the national and international levels and in technical cooperation, as well as making an important contribution to the training of young lawyers. The Russian Federation would continue to support the work of UNCITRAL in all those areas.

65. The Commission's forty-second session had been a productive one. His delegation welcomed the opening for signature of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea; information about the Convention should be circulated both to States and to industry. The working groups on procurement, insolvency law and security interests had made progress, and the Commission's adoption of the notes on cooperation, communication and coordination in cross-border insolvency proceedings was an important outcome of the session. The UNCITRAL Arbitration Rules should be thoroughly revised: the decision to allow Working Group II more time to complete that work deserved support, with a view to the adoption of the revised Rules at the Commission's forty-third session.

66. **Mr. Yokota** (Japan) stressed that the ongoing revision of the 1976 Arbitration Rules should be beneficial to and welcomed by practitioners and that the outstanding issues should be properly addressed by Working Group II at its next session so that work on the topic could be completed at the forty-third session of the Commission.

67. He thanked the Government of the Netherlands for hosting the Rotterdam Rules signing ceremony.

There could be no doubt of the Rules' importance in the context of the uniform legal framework for the international carriage of goods, and his Government would continue to consider what action to take in that regard.

68. In light of the current economic situation, the adoption of the draft Practice Guide on Cross-Border Insolvency Cooperation was timely and appropriate. He welcomed the progress made by Working Group V on the topic of enterprise groups and hoped that consideration of the topic would be completed at the next session of the Commission.

69. **Mr. Stellakatos-Loverdos** (Greece) said that the Rotterdam Rules would provide modern, balanced solutions and a solid legal basis for contracts between interested parties in the international carriage of goods and would enhance legal security in such transactions. He commended the Commission for its work in revising the 1976 Arbitration Rules and agreed that the Working Group should be allowed sufficient time to complete that task in order to guarantee the longevity of the resulting amendments and to meet the high standards of the Rules.

70. The "draft guidelines for the preparation and conduct of UNCITRAL meetings, based on the established practice of UNCITRAL", contained in document A/CN.9/676, reflected the Commission's existing practices and working methods, particularly in relation to decision-making, and provided a balanced, solid framework for its work. They should also provide a sufficiently flexible framework for future work in the area of international or transnational trade law, which frequently provided useful legal tools that could enhance trade relations among all stakeholders during global financial crises. The Commission was known for taking into account the positions and views of all interested States. In the past, observers had also made a valuable contribution to its work. Certainly, an observer should not block a decision of the Commission; voting should be used only in order to avoid situations in which the Commission was prevented by a member State from taking a decision on issues or topics assigned to it.

71. **Ms. Cabello de Daboin** (Bolivarian Republic of Venezuela) said that her delegation welcomed the Commission's legislative guides and model laws, which allowed States to fill gaps in their legislation, amend existing laws, enact new ones and, where

necessary, receive legislative drafting assistance from the Commission.

72. At a time when States were seeking alternative solutions in the areas of trade and investment, work on the topic of arbitration and conciliation was particularly timely; she hoped that it would be completed in 2010. She was also pleased by the progress made by Working Groups IV and VI.

73. While welcoming the 2007 adoption of the Legislative Guide on Secured Transactions, she regretted that work on the revised text of the 1994 Model Procurement Law was still ongoing and hoped that it would be completed for consideration at the forty-third session of the Commission.

74. **Mr. Shah** (Pakistan) said that in light of evolving international trade practice, cross-border cooperation in insolvency cases was of the utmost importance. The Working Group's compilation of practical experience on negotiations and cross-border agreements could provide judges, practitioners and experts with useful reference material and international best practices; in that regard, the adoption of the Practice Guide on Cross-Border Insolvency Cooperation was a step in the right direction. Of particular interest was the reworded paragraph 17 of part III A, concerning the desire of parties to gain court approval of an agreement. However, the Commission's adoption of the Practice Guide should not preclude the compilation of practical experience with respect to cross-border negotiation and agreement.

75. The proposal to replace article 9 of the 1994 Model Procurement Law with a new article 8 in order to allow for the use of electronic communications in the procurement process would require considerable trust in the integrity of such communications. A comprehensive safeguards regime of the type mentioned in paragraph 31 of the Commission's report (A/64/17) would be necessary. His delegation was, however, opposed to the idea of restricting access to procurement on the basis of means of communication, especially when authenticated appropriately by the parties.

76. The issue of electronic reverse auctions raised concerns about factors that could complicate the process and undermine transparency. His delegation fully supported automatic re-evaluation of bids as they were revised during the auction and disclosure to all bidders at all times during the auction of sufficient

information to allow them to determine whether their bid was the winning one. He looked forward to the Commission's future work on the conditions and procedural rules for such auctions.

77. Framework agreements — two-stage procurements in which a framework agreement between suppliers and the procuring entity was made at the first stage and procurement contracts were issued in the form of orders at the second stage — were not addressed in the 1994 Model Procurement Law, not only because they were used infrequently at that time but because of the potential loopholes linked to such agreements. While the first type of closed agreement mentioned in paragraph 33 of the report excluded competition at the second tier, the second type made it difficult to establish basic parameters and specifications. Open agreements, which could be concluded with more than one supplier and to which further suppliers could subsequently become parties, involved an inherent element of uncertainty for all parties to the contract. The conditions for the use of framework agreements, issues related to the threat to effective competition and the risk of collusion among suppliers, and difficulties involved in monitoring the operation of framework agreements must be addressed with care.

78. He hoped that Working Group VI would find solutions to the remaining issues, namely, the interaction between general security rights registries and specialized intellectual property registries; the ordinary course of business exception and its application to intellectual property licences; and the rules of law applicable to transactions in which the purchaser of intellectual property was aware of a prior security right. While he recognized the importance of the annex in providing guidance to States as to the adjustments that they might need to make in their laws in order to avoid inconsistencies between secured financing and intellectual property law, the secretariat needed to make a greater effort to increase awareness of the Legislative Guide itself among States and other interested parties.

79. **Mr. Sadat Meidani** (Islamic Republic of Iran) called on the Commission and its secretariat to make an even greater effort to provide technical assistance to developing countries that needed to upgrade their legal capacities in order to benefit from new communication technologies that fostered trade.

80. It was important not to alter the structure, spirit or drafting style of the 1976 Arbitration Rules and to retain their flexible character, given that many countries had used the Rules as a model in enacting or modernizing their domestic law. He welcomed the Commission's decision not to change the existing mechanism on appointing authorities (A/64/17, para. 293) but was not in favour of including the new provision on the liability of arbitrators (A/CN.9/WG.II/WP.151/Add.1, para. 43) since granting absolute immunity to the arbitrators, and even to experts, rather than establishing an accountability mechanism would inevitably result in impunity. He endorsed the Commission's decision at its forty-first session not to include specific provisions on treaty-based arbitration in the Arbitration Rules and to deal with that issue only after the current revision had been completed; there might also be other issues which would also require consideration by the Working Group at that stage.

81. While the draft model law on public procurement should reflect new procurement techniques, especially those resulting from the use of electronic communications, future work on the topic should focus on modalities that would be feasible in most countries, including the developing countries.

82. It was imperative to find ways of ensuring more effective participation by developing countries in the Commission's working groups and in the overall harmonization and unification of international trade law. He encouraged the Commission and its secretariat to consider practical ways of facilitating such participation and to ensure that the relevant law and practice of developing countries were taken into consideration in preparing notes and documents.

83. Lastly, the Commission must ensure that its rules of procedure were consistent with those of the General Assembly, of which it was a subsidiary body, and should respect those areas that fell within the Assembly's purview.

Agenda item 167: Observer status for the International Olympic Committee in the General Assembly (A/64/145, A/C.6/64/L.5)

84. **Mr. Nazi** (Italy), introducing draft resolution A/C.6/64/L.5 on observer status for the International Olympic Committee, drew attention to the explanatory memorandum contained in annex I to document

A/64/145 and said that Denmark, Montenegro, Trinidad and Tobago and the former Yugoslav Republic of Macedonia had become sponsors. In the Millennium Declaration, adopted on 8 September 2000 (A/RES/55/2), the Heads of State and Government had urged Member States "to support the International Olympic Committee in its efforts to promote peace and human understanding through sport and the Olympic Ideal". That call should be followed by a consistent, positive response to International Olympic Committee (IOC) initiatives for closer cooperation, such as its request for observer status in the General Assembly.

85. The Olympic Movement was an association of 205 National Olympic Committees; the International Federations that governed individual sports, such as the Federation International de Football Association (FIFA) and the International Association of Athletics Federations; the countries organizing the Olympic Games; the five Olympic continental associations; and millions of sportspersons around the world. Its purpose was to place sport at the service of humankind, promote a peaceful society and safeguard human dignity.

86. Since 1993, many General Assembly resolutions had expressed support for the IOC and the Olympic Movement in their efforts to generate mutual understanding, solidarity and peaceful dialogue among communities. The Assembly had called on Member States to cooperate with the IOC and with all concerned agencies and programmes of the United Nations to implement projects using sport as a tool for peacebuilding and human development. The IOC contributed to United Nations peacekeeping missions and had close relations with 15 of the Organization's agencies with a view to promoting human development, humanitarian relief and achievement of the Millennium Development Goals; it also worked with regional organizations and Governments. As an observer to the General Assembly, it would have a greater and more sustained impact in those areas.

The meeting rose at 1 p.m.